



**THE ATTORNEY GENERAL  
OF TEXAS**

GERALD C. MANN

AUSTIN 11, TEXAS

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ATTORNEY GENERAL

Honorable Ben F. Thorpe  
County Attorney  
Scurry County  
Snyder, Texas

Dear Sir:

Opinion No. 0-3340

Re: May a County Judge legally receive a petition for the name of a school trustee to be placed on the ballot for an election to be held April 5, when the petition is filled March 26th, under Article 2746-a?

We have received by telegram your request dated March 26, 1941, for an opinion from this department which request has been considered. We quote from your telegram:

"ADVISE BY WESTERN UNION IF COUNTY JUDGE CAN LEGALLY RECEIVE PETITION FOR NAME OF SCHOOL TRUSTEE TO BE PLACED ON BALLOT FOR ELECTION APRIL 5TH PETITION FILED MARCH 26TH UNDER ARTICLE 2746A PETITION OTHERWISE LEGAL."

Article 2746-a, Revised Civil Statutes, reads as follows:

Any person desiring to have his name placed on said official ballot, as a candidate for the office of trustee of a common school district as herein provided shall, at least ten days before said election, file a written request with the county judge of the county in which said district is located, requesting that his name be placed on the official ballot, and no candidate shall have his name printed on said ballot unless he has complied with the provisions of this Act; provided that five or more resident qualified voters in the district may request that certain names be printed. The county judge, upon receipt of such written request, and at least five days before the election, shall have the ballots printed as provided in this Act, placing on the ballot the name of each candidate who has complied with the terms of this Act,

and deliver a sufficient number of printed ballots and amount of supplies necessary for such election to the presiding officer of the election at least one day before said election is to be held, said election supplies, ballots, boxes, and tally sheets to be delivered by the county judge by mail or in any other manner by him deemed best, to the presiding officer of said election in sealed envelope which shall not be opened by the election officer until the day of the election."

Forty-one, Texas Jurisprudence, page 344, the following rule with reference to the computation of time is given:

"In the computation of time, technical construction of particular phrases are disregarded and the effect is given to the intention of the parties as ascertained from the context or subject matter. Statutes regulating the general subject of notice are construed, as regards the computation of time, most liberally in favor of the party who is to be affected by the notice."

On page 345 the following rule is announced:

"In computing time before or after a specified date, day, act or event, the general rule is that either the day on which the period began or the day on which it expired must be included and the other excluded, it being improper to include or exclude both . . . Much depends upon the facts of the particular case, for courts will always adopt that construction which will uphold and enforce rather than destroy, bona fide transactions and titles."

This rule is supported in the cases cited in Words and Phrases, Vol. 4, pp. 677, 678.

We can see nothing in the statutory provisions of Article 2746-a, supra, that would indicate that the general rules given above are not applicable to the question submitted by you.

In construing the general rule and applying the same to your proposition we believe that the proper way to calculate the time is to include the date of filing, to-wit, March 26th, and to exclude the day of election which is April 5th. In this manner we believe that the petition has

been filed within the ten-day period provided for in the statute, and that the County Judge may properly receive and file said petition and proceed to have the name of the candidate printed upon the official ballot.

We have not had an opportunity to examine the petition inquired about in your telegram. This opinion is written upon the assumption, given in your telegram, that the petition is in the form required by law.

We trust that we have fully answered your inquiry.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/Harold McCracken  
Harold McCracken  
Assistant

HM:ej:wc

APPROVED MARCH 27, 1941  
s/Gerald C. Mann  
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By s/BWB Chairman